(16,550.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 346.

J. FRANCISCO CHAVEZ, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

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1 *Transcript of the Nerio Antonio Montoya Case.*

J. FRANCISCO CHAVEZ
vs.
UNITED STATES.

Tried at the March Term, 1896.

Counsel for plaintiff, F. W. Clancy.
For defendant, Matt. G. Reynolds, Esq., U. S. attorney, and Summers Burkhart, Esq., assistant U. S. attorney.

2 UNITED STATES OF AMERICA, *Territory of New Mexico,* } *ss.*:

Be it remembered that heretofore, to wit, on the sixteenth day of July, A. D. 1892, J. Francisco Chavez, by his attorney, F. W. Clancy, Esq., filed in the office of the clerk of the court of private land claims a petition, in which said J. Francisco Chavez is plaintiff and The United States of America is defendant; which said petition is in the words and figures following, to wit:

3 UNITED STATES OF AMERICA, *ss.*:

In the Court of Private Land Claims, Sitting in the Territory of New Mexico, at the City of Santa Fé.

J. FRANCISCO CHAVEZ
vs.
THE UNITED STATES.

To the honorable chief justice and associate justices of said court:

Your petitioner, J. Francisco Chavez, a resident of the county of Valencia and Territory of New Mexico, brings this his petition against the United States of America and shows to the court the following:

1. On the 28th day of February, 1831, Nerio Antonio Montoya, then a resident of the place called Valencia, addressed a petition to the ayuntamiento of the town of Tome, asking that body to make a report to the territorial deputation recommending that he be placed in possession of a tract of land about half a league in area and distant about one league from the Manzano grant, and on the 19th of March, 1831, the ayuntamiento of Tome recommended to the territorial deputation that the donation of the land prayed for should be made, and on the 12th day of November, 1831, the territorial deputation of New Mexico, with the consent and participation of the governor and political chief of said Territory, granted the land prayed for by said Montoya and asked the alcalde of the proper jurisdiction to execute the proper document to secure to the
4 grantee the land granted. On the 7th of December, 1831, Miguel de Olona, alcalde of the jurisdiction of Tome, exe-

cuted a document showing the presentation to the ayuntamiento of Tome of the order of the territorial deputation and expressing his readiness to put the grantee in possession as soon as the grantee should notify him to do so, and on the 12th day of December, 1831, the said alcalde delivered possession of the land to the grantee and executed an act of juridical possession. Copies and translations of said petition, report, document, act of possession, and of a certificate by the secretary of the territorial deputation as to the decree of that body are filed herewith in duplicate as parts of Exhibits A and B, the original of said act of possession and copies of said other papers being on file in the office of the surveyor general for New Mexico as part of the files of private land claim No. 51. A copy and translation of said decree of the territorial deputation are filed herewith as Exhibit C in duplicate, the original thereof being on file in the office of said surveyor general.

2. The said grantee, Nerio Antonio Montoya, after having received possession of said land as aforesaid, remained in possession thereof, as your petitioner is informed and believes, up to the time of the occupation of New Mexico by the military forces of the United States, in 1846.

3. On the 2nd day of October, 1848, the said grantee, Nerio Antonio Montoya, executed before Fernando Aragon, alcalde, a conveyance of the said grant to Juan Perea and his sister, Dolores Perea, a copy and translation of said conveyance being filed herewith in duplicate as part of Exhibits A and B, the original thereof being on file in the office of the surveyor general of New Mexico as part of the files of private land claim No. 51.

4. This petitioner has acquired by purchase from the said Dolores Perea and Juan Perea, respectively his mother and uncle, all of their title and interest in the said land, and he avers that he has succeeded to all of the rights of said original grantee, Nerio Antonio Montoya.

5. The said grant is situate in the county of Valencia and Territory of New Mexico, east of the Manzano mountains and near the confirmed grant of the town of Torreon, is bounded on the east by the Apache rancheria, on the west by the Central spring (ojo de en medio), on the north by the highest part of the mountain ridge of the same cañon in which the spring is situated, and on the south to the beginning of the little valley of the Cuerbo and as far as the spring situated therein commonly called the Ojo del Cuerbo, and contains, according to the survey made under the direction of the surveyor general for New Mexico, 3,546.06 acres. A map is filed herewith, showing the same as near as may be, marked Exhibit D.

6. The claim for said grant was submitted to the United States surveyor general for New Mexico by your petitioner in 1871 under the provisions of the act of Congress of July 22nd, 1854, and was by that officer on the 20th of June, 1871, approved and the papers in the case transmitted for the action of the Congress of the United States, but so far as this petitioner is informed Congress has taken no action with regard to said claim. On the 8th day of May,

1886, the then surveyor general for the Territory of New
6 Mexico, Mr. George W. Julian, undertook to make what is called a supplementary report in the matter of said claim and recommended that the claim be rejected by Congress, but so far as this petitioner is informed no action has ever been taken by Congress upon said supplementary report. This petitioner avers that no opportunity was given him for any hearing before said Julian, and that the said adverse report is based upon assumptions and statements of fact which are without foundation and truth.

This petitioner therefore prays that the validity of his title to the said grant may be inquired into and decided by this court, and that the same may be confirmed to him or to the heirs and legal representatives of said original grantee, Nerio Antonio Montoya.

J. FRANCISCO CHAVEZ, *Petitioner*,
By F. W. CLANCY, *His Solicitor*.

7 (EXHIBIT A.)

Muy Ylustre Ayuntamto, de Tome:

El c. Nerio Antonio Montoya, vecino del puesto de Valencia, ante V. S., con el mas profundo respecto, paresco y digo: Que hallan dome en dicho puesto de Valencia reducido solamente a la rama que corresponde a mi esposa sin saber qual pueda tocarle por estar el referido sitio encomunado y sin esperansas de que aunque sea repartido haya de tocarme une parte concederable, conque pueda acudir a la precisa subsistencia de una crecida familia que me rodea, respecto de ser corto y muchos los poseidores vajo esta su posicion, me veo en la imperiosa nesecidad de manifestarlo a V. S. para que tenga la dignacion de tomar en consideracion esta mi situacion, y por un efecto de su notoria bondad tenerla igualmte. de poner a continuacion su informe a la Exma. Diputacion para que S. E. en vista de este y de lo que expongo pueda dictaminar, si lo tuviere a bien, el que se me posecione desde el ojo de en medio hasta la rancheria que den para el ambito, como de media legua, por todo el cañon, distante una de la merced del Manzano, cullo sitio baldio y a mi concepto sin perjuicio de los havitantes de la comprehencion de esta jurisdicion, por lo que respecta a pasteos y aguas de sus ganados, causa la incomodidad del cañon en que se haya el mencionado sitio, y la cantidad de agua que encierra; y util solamente a una certa siembra a la que unicamente me intereso, y de la que lla brifique el ano passado, la que sin embargo de no aberla podido acistir completamente por la larga distancia, no dejo de aleviarme su corto producto. Por todo lo cual a V. S., humilde y sumicamte, pido y suplico sea muy servido de hacer como solicito; que en ello recivire gracia y justicia. Juro no proceder de malicia y en lo necesario, &c. Ba en este papel comun por no haver en esta jurisdicion del sello que corresponde. Quedando con obligacion de agregar el aspiado.

NERIO ANTO. MONTOLLA.

Valencia, Febrero, 28 de 1831.

8 *Ynforme del Alluntamiento.*

Tome, Marzo 19 de 1831.—Convencido este r. alluntamiento de las poderosas razones que el suplicante ce pone, y el ningun perjuicio que resulta, antes si bastante beneficio al interes y aumento de la agricultura, pone su ynstancia a la exma. diputacion territorial quien como facultada pueda acceder a la donacion del terreno que pide dho. suplicante, sin perjuicio de pastos y abrebaderos para los trancetantes.

JUAN BACA.

MIGUEL DE OLONA,
Rejidor Secretario.

Decreto de la Exma. Diputacion (*Quaderno* 1, *Fo.* 2).

SANTA FÉ, 12 *Nove. de* 1831.

Su E. la diputacion de este terro., instruido del ynforme que a continuacion de esta ynstancia da el alluntamto. constitucional de Tome, ha resuelto en secion de hoy se done el terreno que solicita el impetrante, preveniendo al alc'e. de dha. jurisdicion forme el correspondente documento que asegure al agraciado en la merced que por este se le concede.

ABREU, *Secreto.*

Documto. del Alce.

El. c. Miguel de Olona, segundo rejidor de esta r. alluntamto de Tomey alcalde actual de la misma jurisdicion &a: En cumplimiento de lo decretado por la exma. diputacion de este terro., con f'ha 12 de Nbre del ano corriente al margen de la instancia que, con f'ha 28 de Febrero, presento a este r. alluntamto el c. Nerio Antonio Montoya, vecino de esta misma jurisdicion, en culla instancia consta el ynforme queda esta alluntamto. por el qual a benido S. E. en agraciar con su solicita en la banda opuesta de la sierra que es el ojo de en medio, y desde este hasta la rancheria que es la
9 solicitud de el agraciado, y para que le sirba de titulo y a cer constar su propiedad en el espresado terreno, yo el nominado alcalde, co arreglo a lo dispuesto por S. E. y por la facultad que me es conferida por la ley, estiendo el presente documento actuando con testigos de asistencia por falta de todo escribano, que no la hay segun derecho, en este papel comun por la notario falta del sellado; quedando obligado el agraciado a agregar el del sello que corresponde, quedando a el mismo tiempo en este archivo la instancia original de Montoya, como tambien puede el espresado Montoya el dia que guste y tenga abien avisarme para pasar con el a posecionarle en la propiedad que se le concede con todas las formalidades que son de estilo para que con libre poderio pueda gozar por si, sus hijos y susesores el terreno que en nombre de la soverania se le consede; y para toda constancia lo firme y otorgue en siete dias del mes de Dbre. de 1831, con los de mi asistencia, como es dicho; de que doy fee.

MIGUEL DE OLONA.

Asa.: ISIDORO SAMORA.
Asa.: ANTONIO BARELA.

Posesion.

En doce dias del mes de Dbre. de 1831, 110, el segundo rigidor de es te r. alluntamiento y alcalde actual de esta jurisdicion de Tome, en vista de lo prevenido por la exma. diputacion de este terro. y con el aviso que tuve del c. Nerio Antonio Montoya, pase con el al sitio que se le dona, y estando en el y no resultando perjuicio alguno le senale al espresado Montoya los linderos siguientes: por el oriente la rancheria que llaman de los apaches; por el poniente el ojo de en medio; por el norte lo alto del monte de la cuchilla del cañon mismo a donde esta el ojo, y por el sur el nacimiento de la Canada del Cuervo hasta un ojo que esta en la misma Canada que comunmente llaman el Ojo del Cuervoy; le adverto las condiciones espresas en el ynforme en cuanto a pastos y abrevaderos para los tansitantes, mandandole al mismo tiempo poner seis mojoneras firmes y sitables y entendido de todo lo coji de la mano y lo pasie por dicho terreno, arranco sacate, tiro piedras a los cuatro bientos, gritando por una y tres veces, biba la Soverania, en senal de berdadera posesion pacifica sin contradicion. Y para que asi conste lo firme yo dicho regidor y alcalde actual, con los de mi asistencia; como dicho es; de que doy fee.

MIGUEL DE OLONA.

Assa.: JUAN JOSE DE MADARIAGA.
Assa.: ANTO. BARELA.

En los Corrales, condado de Bernalillo a los dos dias del mes de Octubre de 1848, ante mi Fernando Aragon, Aloe. del mencionado condado, comparecieron Dn. Nerio M-ntoya, vico. del condado de Balencia y Dn. Juan Perea vecino de Bernalillo, y estando presentes dijo el primero qe. traspasa todo su derecho y poderio de este documento en el mencionado Perea y su hermana Dna. D-lores Perea pa qe. desde luego queden estos senores hasiendo el lugal huso de este derecho como propios ullo qe. es con mas juna huerta con cuatro cientos setenta y cuatro matas de huba; tres piesas de abitacion de palo; ochenta y seis arboles frutales de durazno y manzana; la tapia qe. resguarda la huerta con dro de q. si se derrota pueden fomentala de sus estramuros; tambien el documento y dro. de la acequia con qu le riega dha huerta; diez y nueve frascos aguardiente; una aucion qu tiene comprada a Manl. Sedillo en el sitio de las Peraltas, los tres cuartos mencionados los da con el solar y choreras correspondientes, y dice el otorgante qe todo le presente en este documento lo escede a estos senores por la cantidad de cuatro mil quinientos ochenta una cabezas de ganado menor de qe les era deudor y otros picos qe por efectos de tienda tambien debia; con cuya cantidad se an dado por pagados y satisfechos de la mencionada cantidad. Aci lo han otorgado por auto y certifico el presente, con los testigos de acist'a; de todo doy fee.

FERNANDO ARAGON, *Alcalde.*
NERIO ANO. MONTOYA.

Acista.: MARIO S. VERGARA.
De. acissta: JUAN VIGIL.

11 GEFATA, POLITICA DE NUEVO MEJICO.

Por el oficio de V. f ha beinte del corriente me he impuesto haver V. cumplido con el decreto de la exma. diputacion en que poseciona de un terreno al C. Nerio Antonio Montoya y pero con respecto a la consulta que V. me hase sobre cuantos deben de ser sus deros. digo que lo ignoro, y que puede V. si acaso gusta dirijir esa consulta al Sor. Azesor quees el que en tales casos deve consultar a los jueces de 1ra Instancia.

Dios y la libertad, Santa Fé, 22 de Decre de 1831.

JOSE ANTONIO CHAVEZ.

Sor. Regidor D. Miguel Alona.

12 (EXHIBIT B.)

To the honorable the corporation of Tome:

I, citizen Nerio Antonio Montoya, resident of the town of Valencia, appear with the greatest respect before your honorable body and state that, finding myself at the said place, Valencia, limited only to that portion that belongs to my wife, not knowing what share is hers for the reason that the said tract is owned in common, and having no hope that even it it is divided up a sufficient amount will come to me on which to depend for the support of a large family, by which I am surrounded, the land being small in quantity and the holders being numerous, under this apprehension I find myself under the imperious necessity of applying to your honorable body that you be pleased to take this my situation in consideration, and that, actuated by your well-known generosity, you may further manifest the same by appending hereto your report to the most excellent deputation so that that body, in view thereof and of what I myself represent, may, should it deem proper to do so, direct that I be placed in possession from the Central spring to the rancheria, about half a league in extent along the cañon and distant about one league from the Manzazo grant, which tract is uncultivated, and in my opinion the grant would not be injurious to the inhabitants within this jurisdiction in regard to pasturing and water for their live stock, owing to the unsuitableness of the cañon in which the said tract lies and the small quantity of water it contains, and it is valuable only for cultivation on a small scale, for which purpose only I desire it, I having planted there last year, and the crop, though I could not tend it well, owing to the great distance, did not fail to relieve me with its limited production; for all which reasons I humbly and submissively ask and pray your honorable body to be pleased to do for me as I request, for I shall thereby receive favor and justice. I declare not to act in dissimulation and whatever is necessary, &c.

This is written on this common paper, there being no paper of the proper stamp in this jurisdiction, I remaining under the
13 obligation of attaching thereto the cancelled one.

Valencia, February 28, 1831.

NERIO ANTONIO MONTOLLA.

Report of the Corporation Council.

TOME, *March* 19, 1831.

This honorable council being convinced by the strong reasons set forth by the petitioner, and no injury resulting, but rather considerable advantage, to the interests and encouragement of agriculture, his petition will go before the most excellent territorial deputation, which, as the authority competent, may accede to the donation of the land prayed for by the said petitioner without injuring the pastures and watering places for the passers-by.

JUAN BACA.

MIGUEL DE OLONA,
Member and Secretary.

Decree of the Most Excellent Deputation, Book 1, *Folio* 2.

SANTA FÉ, *November* 12, 1831.

The honorable the deputation of this Territory, having received the report of the constitutional council of Tome, appended to this petition, has resolved in this day's session to grant the land prayed for by the petitioner, charging the alcalde of said jurisdiction to execute the document that will secure the grantee in the grant hereby made to him.

ABREU, *Secretary.*

Alcalde's Document.

The citizen Miguel de Olona, second alderman of this honorable council of Tome and present alcalde of the same jurisdiction, &c.

In obedience to the decree of the most excellent deputation of this Territory made under date of November 12th of the current
14 year on the margin of the petition which, under date of February 28, the citizen Nerio Antonio Montoya, resident of this said jurisdiction, presented to this honorable council, and on which petition is recorded the report made by this council, in accordance with which report its excellency has deemed it proper to accede to the petition of Montoya, granting him full and formal possession of the tract he prayed for on the opposite side of the mountain at the Central spring and from the latter to the rancheria, which is according to the petition of the grantee, and in order that it may serve him as a title to and secure to him as his own property the said land, I, the said alcalde, in pursuance of the order of its excellency and by virtue of the power conferred on me by law, do execute to him this document, acting with attending witnesses for want of a notary, there being none such as the law requires, and on this common paper on account of the well-known lack of stamped paper, the grantee standing obligated to attach the proper revenue stamp, Montoya's original petition remaining in the meantime among the archives of this office, and the said Montoya, whenever he may choose or think best to do, may notify me to proceed with

him to the locality to place him in possession of the property granted him, with all the customary formality, to the end that with full control he may enjoy for himself, his children and successors, the land which in the name of the nation is granted to him.

And for full security I signed and executed this on the seventh day of the month of December, one thousand eight hundred and thirty-one, with my attending witnesses as aforesaid; to all of which I certify.

MIGUEL DE OLONA.

Attending: ISIDRO SAMORA.
Attending: ANTONIO BARELA.

Possession.

On the twelfth day of the month of December, one thousand eight hundred and thirty-one, I, second alderman of this
15 honorable council and present alcalde of this jurisdiction of Tome, in compliance with the provision made by this most excellent deputation of this Territory and the notification given me by the citizen Nerio Antonio Montoya, proceeding with him to the tract of land granted to him and standing thereupon, and no injury whatever resulting, I designated to the said Montoya the following boundaries: on the east, the so-called Apache rancheria; on the west, the Central spring; on the north, the mountain summit of the ridge of the said cañon, the same at which the spring is situated, and on the south, the commencement of the Canada del Cuervo up to a spring situated therein, commonly called the Cubero (Cuerbo) spring, and I notified him of the conditions expressed in the report relative to pastures and watering places for the use of passers-by, directing him at the same time to establish firm and permanent landmarks, and in confirmation of the whole I took him by the hand and led him over said land and plucked up grass, cast stones toward the four cardinal points, shouting aloud ("Blessed be the nation") once and thrice in sign of true, peaceable, and unopposed possession.

And that it may so appear I, said alderman and present alcalde, signed this document with my attending witnesses as aforesaid; to which I certify.

MIGUEL DE OLONA.

Attending: JUAN JOSIE DE MADRIAGA.
Attending: ANTONIO BARELA.

At Corrales, county of Bernalillo, on the 2nd day of the month of October, 1845, before me, Fernando Aragon, alcalde of the said county, appeared Nerio Montoya, resident of the county of Valencia, and Juan Perea, resident of Bernalillo, and, both being present, the former declared that he conveys all the right and power in this document to the said Perea and his sister, Dolores Perea, to *to* the end that henceforth they may be the proprietors thereof,
16 making legal use of this title as their own property, which it is, together with a (lot of land) (huerta) containing four

hundred and seventy-four grapevines, three rooms, built of wood, for dwellings, eighty-six peach and apple fruit trees, and the wall surrounding the grape patch, with the privilege that should it fall down they may rebuild it from the adjoining ground; also the document and right to the acequia irrigating said patch, nineteen jars (frascos) of brandy, a land claim (aucion) the vendor has purchased from Manuel Sedillo at the place Las Peraltas, and the three rooms aforesaid he conveys, together with the lot and the eaves drippings (chorreras) belonging thereto, and the vendor declares that all that is mentioned in this instrument he conveys (esede) to the said vendees (for four thousand five hundred and eighty-one head of sheep and goats (ganado menor), for which, as well also as for some merchandise, he was in debt to them), for which property (cantidad) the said vendees acknowledge themselves paid and satisfied the said indebtedness.

Thus have the parties contracted before (me), and I certify thereto with attending witnesses; to all of which I certify.

FERNANDO ARAGON, *Alcalde.*
NERIO ANTONIO MONTOYA.

Attending: MARCOS S. VERGARA.
Attending: JUAN BIJIL.

OFFICE OF THE POLITICAL CHIEF OF NEW MEXICO.

By your official communication of the 20th instant I am advised of your having executed the decree of the most excellent deputation granted to the citizen Nerio Antonio Montoya a tract of land.

But in regard to the inquiry you make of me, as to how much your fee should be, I inform you that I am ignorant in the premises, and that you may, if you choose to do so, put the question to the assessor (asesor), who is the officer to whom it belongs, to advise the justices of first instance in such cases.

God and liberty. Santa Fé, December 22nd, 1831.

JOSE ANTONIO CHAVEZ.

To Alderman Miguel Olona.

17 (EXHIBIT C.)

Extract from Record of Proceedings of the Territorial Deputation.

Secion del dia 12 de Novre. de 1831.

Leyda y aprovada la acta antecedente se dio cuenta con una instancia del C. Nerio Antonio Montoya, vesino de Valencia en que solicita se done para labor un citio yermo que hay en el Manzano; dentre de los limites del Ojo de en medio hasta la rancheria: y visto

el informe del R. Ayuntamiento de Tome donde se manifiesta no haver obstaculo para la consecion del dho terreno se mando donar.

* * * * * * *

Semlevanto la secion.

SANTIAGO ABREU, *Presidte.*	[RUBRICA.]
JUAN RAFAEL ORTIZ.	[RUBRICA.]
ANTO. JOSE MARTINEZ.	[RUBRICA.]
JUAN MANL. SALAZAR.	[RUBRICA.]
TEODOSIO QUINTANA.	[RUBRICA.]
RAMON ABREU, *Srio.*	[RUBRICA.]

Secion del dia 12 de Novre. de 1831 por la tarde.

Leyda y aprovada la acta anterior.

* * * * * * *

Se-levanto la secion.

SANTIAGO ABREU, *Presidte.*	[RUBRICA.]
JUAN RAFAEL ORTIZ.	[RUBRICA.]
ANTO. JOSE MARTINFZ.	[RUBRICA.]
JOSE MANL. SALAZAR.	[RUBRICA.]
TE-DOSIO QUINTANA.	[RUBRICA.]
RAMON ABREU, *Srio.*	[RUBRICA.]

18 (TRANSLATION OF EXHIBIT C.)

Extract from Record of Proceedings of the Territorial Deputation.

Session of November 12, 1831.

The foregoing rec-rd having been read and approved, a petition of citizen Nario Montoya, a resident of Valencia, in which he asks for the donation, for agricultural purposes, of a tract of vacant land in the Manzano within the limits of the Ojo de en Medio as far as the rancheria, was taken up and the report of the respectable corporation council of Tome, in which it is set forth that there is no objection to the concession of the said land, having been heard, it was ordered that it be granted.

* * * * * * *

The session was adjourned.

SANTIAGO ABREU, *President.*	[RUBRIC.]
JUAN RAFAEL ORTIZ.	[RUBRIC.]
ANTO. JOSE MARTINEZ.	[RUBRIC.]
JOSE MANL. SALAZAR.	[RUBRIC.]
TEODOSIO QUINTANA.	[RUBRIC.]
RAMON ABREU, *Secretary.*	[RUBRIC.]

Afternoon session of November 12, 1831.

The foregoing record having been read and approved.

* * * * * * *

The session was adjourned.

SANTIAGO ABREU, *President.* [RUBRIC.]
JUAN RAFAEL ORTIZ. [RUBRIC.]
ANTO. JOSE MARTINEZ. [RUBRIC.]
JOSE MANL. SALAZAR. [RUBRIC.]
TEODOSIO QUINTANA. [RUBRIC.]
RAMON ABREU, *Secretary.* [RUBRIC.]

19 And afterwards, to wit, on the nineteenth of November, 1892, there was filed in the said office of the said clerk the answer of the United States to the said petition; which answer was and is in the words and figures following, to wit:

20 UNITED STATES OF AMERICA, *ss:*

In the Court of Private Land Claims, Santa Fé District, November Term, 1892.

J. FRANCISCO CHAVEZ, Plaintiff,
vs.
THE UNITED STATES, Defendant. } 20.

Answer.

Cómes now the United States, by its attorney, Matt. G. Reynolds, and for answer to the petition filed herein says:

It has no knowledge or information sufficient to enable it to form a belief as to whether, on the 28th day of February, 1831, Nerio Antonio Montoya petitioned the ayuntamiento of the town of Tome to recommend to the territorial deputation that he be placed in possession of a half a league of land near the Manzano grant, nor as to whether said ayuntamiento did, on the 19th day of March, 1831, recommend the donation of said land as prayed, nor as to whether said territorial deputation, on the 12th day of November, 1831, with the participation of the governor, did undertake to grant the land as prayed to said Montoya.

But it says, if Montoya was placed in possession of said land as alleged and received a grant as alleged, the same was without warrant or authority of law and void.

It says it has no knowledge or information as to whether, on the 12th day of December, 1831, one Miguel de Olona, alcalde of the jurisdiction of Tome, delivered possession of said property to said Montoya or not, but says that if said Olona placed said Montoya in possession of said property under and by direction of the departmental assembly the same was without warrant or authority of law and in nowise bound the Mexican government or imposed
21 any obligation upon it, and was therefore void.

It therefore says that no grant was ever made nor posses-

sion given to said Montoya by any one authorized by the laws of Mexico to dispose of its public domain.

It denies that the governor of said province participated in the deliberations of said assembly, and further says that if he did so it was only as an *ex officio* member and presiding officer thereof, and by said act, if he did so act, he imposed no obligations on his government by reason thereof as against the laws, rules, and regulations governing the disposition of the public domain.

It says it has no knowledge or information as to whether the plaintiff has succeeded in whole or in part to any interest or claim made by the alleged original grantee, Montoya.

All other allegations not hereinbefore answered are denied, and it is demanded that plaintiff be put to his proof of all the allegations in said petition, as provided he shall be by the act approved March 3rd, 1891, under which this court assumes jurisdiction of this controversy, and that the said plaintiff shall be put to his proof as to his pretended interest or supposed interest therein.

Now, having fully answered, it prays the court that a decree may be entered rejecting the confirmation of said alleged claim or grant, and for such other and further orders as may seem mete and that this court may be authorized to make in the premises.

Respectfully submitted.

MATT. G. REYNOLDS,
U. S. Attorney.

22 And afterwards, to wit, at a stated term of the court of private land claims begun and held at Santa Fé, New Mexico, on the fourteenth of May, A. D. 1895, and on the first day of September, the same day, being the fourteenth day of May, 1895, the following, among other, proceedings were had, to wit:

J. FRANCISCO CHAVEZ
vs.
THE UNITED STATES.

On motion of petitioners, by *their* attorney, F. W. Clancy, Esq., it is ordered by the court that this cause —, and the same is hereby, passed until some future day of the term.

23 And afterwards, to wit, on the fifth day of October, 1895, the said petitioner filed in the said office of said clerk his amended petition and the sketch map; which said amended petition and map were and are in the words and figures following, to wit:

24 UNITED STATES OF AMERICA, *ss:*

In the Court of Private Land Claims, Sitting in the Territory of New Mexico, at the City of Santa Fé.

J. FRANCISCO CHAVEZ
vs.
THE UNITED STATES.

To the honorable chief justice and associate justices of said court:

Your petitioner, J. Francisco Chavez, a resident of the county of Valencia and Territory of New Mexico, brings this his amended petition against the United States of America and shows to the court the following:

1. On the 28th day of February, 1831, Nerio Antonio Montolla, then a resident of the place called Valencia, addressed a petition to the ayuntamiento of the town of Tome, asking that body to make a report to the territorial deputation recommending that he be placed in possession of a tract of land about half a league in area and distant about one league from the Manzano grant, and on the 19th of March, 1831, the ayuntamiento of Tome recommended to the territorial deputation that the donation of the land prayed for should be made, and on the 12th day of November, 1831, the territorial deputation of New Mexico, with the consent and participation of the acting governor and political chief of said Territory, granted the land prayed for by said Montoya and asked the alcalde of the proper jurisdiction to execute the proper document to secure to the
25 grantee the land granted. On the 7th of December, 1831, Miguel de Olona, alcalde of the jurisdiction of Tome, executed a document showing the presentation to the ayuntamiento of Tome of the order of the territorial deputation and expressing his readiness to put the grantee in possession as soon as the grantee should notify him to do so, and on the 12th day of December, 1831, the said alcalde delivered possession of the land granted to the grantee and executed an act of juridical possession. Copies and translations of said petition, report, decree, document, and act of possession are filed with the original petition herein in duplicate as parts of Exhibits "A" and "B," the originals thereof being on file in the office of the surveyor general of New Mexico as part of the files of private land claim number 51.

2. On the 22nd of December, 1831, the governor and political chief of New Mexico, in answer to a communication from said alcalde, Olona, shows that he was advised of Olona's having executed the decree of the deputation, a copy and translation of the governor's letter to Olona being filed with the original petition herein as part of Exhibits "A" and "B," the original thereof being on file in the office of the surveyor general of New Mexico as part of the files of private land claim No. 51.

3. The said grantee, Nerio Antonio Montoya, after having received possession of said land as aforesaid, remained in possession thereof, as your petitioner is informed and believes, up to the time of the

occupation of New Mexico by the military forces of the United States, in 1846.

4. On the 2nd day of October, 1848, the said grantee, Nerio Antonio Montoya, executed before Fernando Aragon, alcalde,
26 a conveyance of the said grant to Juan Perea and his sister, Dolores Perea, a copy and translation of said conveyance being filed with the original petition herein in duplicate as part of Exhibits "A" and "B," the original thereof being on file in the office of the surveyor general of New Mexico as part of the files of private land claim No. 51.

5. This petitioner has acquired by purchase from the said Dolores Perea and Juan Perea, respectively his mother and uncle, all of their title and interest in the said land, and he avers that he has succeeded to all of the rights of said original grantee, Nerio Antonio Montoya.

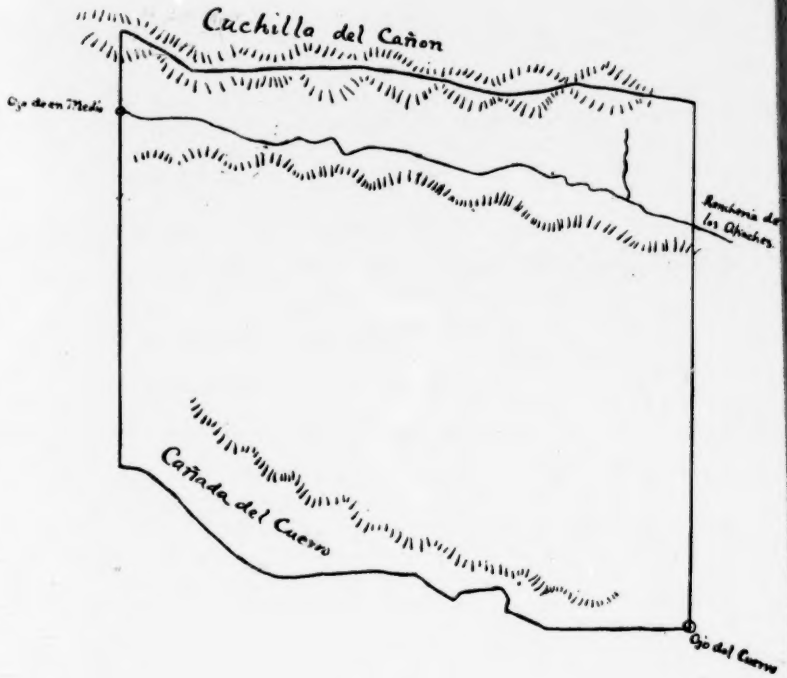
6. The said grant is situate in the county of Valencia and Territory of New Mexico, east of the Manzano mountains and near the confirmed grant of the town of Torreon, is bounded on the east by the Apache rancheria, on the west by the Central spring (Ojo de en Medio), on the north by the highest part of the mountain ridge of the same cañon in which the spring is situate, and on the south to the beginning of the little valley of the Cuerbo and as far as the spring situated therein commonly called the Ojo del Cuerbo, and contains about 5,000 acres. A map is filed herewith showing the same as near as may be.

(Here follows diagram marked p. 28.)

7. The claim for said grant was submitted to the United States surveyor general for New Mexico by your petitioner in 1871 under the provisions of the act of Congress of July 22nd, 1854, and was by that officer on the 20th of June, 1871, approved and the papers in the case transmitted for the action of the Congress of the
27 United States, but so far as this petitioner is informed Congress has taken no action with regard to said claim. On the 8th day of May, 1886, the then surveyor general of the Territory of New Mexico, Mr. George W. Julian, undertook to make what is called a supplementary report in the matter of said claim and recommended that the claim be rejected by Congress, but so far as this petitioner is informed no action has ever been taken by Congress upon said supplementary report. This petitioner avers that no opportunity was given him for any hearing before said Julian, and that the said adverse report is based upon assumptions and statements of fact which are without foundation and truth.

This petitioner therefore prays that the validity of his title to said grant may be inquired into and decided by this court, and that the same may be confirmed to him or to the heirs and legal representatives of said original grantee, Nerio Antonio Montoya.

J. FRANCISCO CHAVEZ, *Petitioner*,
By F. W. CLANCY, *His Solicitor*.



No 346.
Chaves } p28
N Mex.

Sketch Map
of the
Nerio Antonio Montoya Grant
Reported Claim No 51

Estimated Area, 5000 Acres.

29 And afterwards, to wit, at a stated term of said court begun and held at Santa Fé, New Mexico, on the seventh day of October, 1895, and on the first day of said term, the same being October seventh, 1895, the following, among other, proceedings were had, to wit:

J. FRANCISCO CHAVEZ
vs.
THE UNITED STATES.

The above-entitled cause now coming on to be heard was, upon motion of F. W. Clancy, Esq., attorney for plaintiff, passed.

30 And afterwards, to wit, on the eighteenth day of February, 1896, the said defendant filed its answer to said amended petition in the said office of said clerk; which said answer was and is in the words and figures following, to wit:

31 UNITED STATES OF AMERICA, *ss:*

In the Court of Private Land Claims, Santa Fé District, March Term, 1896.

J. FRANCISCO CHAVEZ, Plaintiff,
versus
THE UNITED STATES, Defendant. } No. 20.

Answer to Amended Petition.

Comes now the United States, by its attorney, Matt. G. Reynolds, and for answer to the amended petition filed herein says:

It has no knowledge or information sufficient to enable it to form a belief as to whether, on the 25th day of February, 1831, Nerio Antonio Montoya petitioned the ayuntamiento of the town of Tome to recommend to the territorial deputation that he be placed in possession of a half a league of land near the Manzano grant, nor as to whether said ayuntamiento did, on the 19th day of March, 1831, recommend the donation of said land as prayed, nor as to whether said territorial deputation, on the 12th day of November, 1831, did undertake to grant the land as prayed for to said Montoya; but it denies that said territorial deputation, with the consent and participation of the acting political chief and governor, granted the land prayed for, and alleges that the laws of Mexico did not provide for an acting political chief and governor for New Mexico in 1831.

Further answering, it alleges that if there was such an officer as acting political chief and governor, who participated in the deliberations of the territorial deputation on November 12th, 1831, he only so participated as an *ex officio* member of said body and did not act as governor.

32 Further answering, it alleges that the territorial deputation had no power or authority to grant the public lands of Mexico, and that if it attempted to make the grant alleged in said petition its action was without warrant or authority of law and in

nowise bound the Mexican government or imposed any obligations upon the United States as successor of the Mexican government, and that said alleged grant is void.

Further answering, it says that it has no knowledge or information as to whether or not the possession of such property was delivered to said Montoya, as in said petition alleged, but says that if possession was so delivered it was without warrant or authority of law.

Further answering, it denies that the said alleged grantee, after having received possession of said land as alleged in said petition, remained in possession thereof up to the time of the occupation of New Mexico by the military forces of the United States, in 1845.

As to the other allegation- of said petition, it says it has no knowledge or information sufficient to enable it to form a belief as to whether or not the same are true, and prays that plaintiff be put to strict proof of said allegations.

Further answering, the said United States says that the tract of land so claimed to have been granted as in said petition set forth is entirely included within the exterior limits of a certain other tract of land which in the year 1819 was granted by the governor of the then province of New Mexico to one Bartolome Baca; which said last-mentioned tract of land is described as follows, to wit:

33 Bounded on the north by the Ojo del Cuervo, following its range to the Ojo del Chico; on the east by the Peda rual hill, on the south by the Ojo del Cibalo, on the west by the summit of the mountain.

That a claim for said last-mentioned tract of land under and by virtue of the said grant to the said Bartolome Baca was presented to this court under the provisions of an act of Congress entitled "An act to establish a court of private land claims and to provide for the settlement of private land claims in certain States and Territories," approved March 3rd, 1891, by the heirs and legal representatives of the said Bartolome Baca on January 9th, 1893, and such proceedings were had in said court on the said claim, that on the 29th day of September, 1894, the said grant of the said tract of land was recognized as a good and valid grant by the Spanish authorities to the said Bartolome Baca, and a decree of confirmation of the said claim to the extent of eleven (11) square leagues was entered by the said court.

Further answering, the said United States says that in the year 1841 a grant was made by the authorities of the Republic of Mexico to twenty-seven (27) persons, residents of the jurisdiction of Valencia, of a tract of land described as follows, to wit:

From the spring of Torreon towards the north to the lands of Tajique, a distance of about eight hundred (800) varas; from said spring to the south one (1) league, on the east as far as the water reached, and on the west to the ranch belonging to one Nerio Antonio Montoya.

That a claim for said land so granted was presented to the surveyor general of the Territory of New Mexico under the 8th section of an act of Congress approved on the 8th day of July, 1854, in the

year 1856; which said claim was afterwards approved by the said surveyor general and recommended to Congress for confirmation.

That thereafter and on, to wit, the 21st day of June, 1860, the Congress of the United States confirmed the said claim as recommended for confirmation by the said surveyor general.

34 That thereafter and on, to wit, the 20th day of June, 1871, the said tract of land so claimed and so confirmed by Congress was surveyed under the direction of the surveyor general of the Territory of New Mexico and its extent and boundaries definitely located by such survey, and that thereby and by said confirmation claimants of said grant became and were vested with a full and perfect legal title to all the lands included within the said tract of land as surveyed and located as aforesaid.

That a large portion of the lands now claimed by the petitioner in this cause are included within the exterior boundaries of the tract of land so granted by the Mexican authorities to the twenty-seven (27) individuals of the jurisdiction of Valencia and so confirmed by Congress and surveyed and definitely located by the surveyor general of the Territory of New Mexico.

Now, having fully answered, it prays the court that a decree may be entered rejecting the confirmation of said alleged claim or grant, and for such other and further orders as may seem meet and that this court may be authorized to make in the premises.

MATT. G. REYNOLDS,
U. S. Attorney.

35 And afterwards, to wit, at a stated term of said court begun and held at Santa Fé, New Mexico, on the second day of March, 1896, and on the first day of said term, the same being March second, 1896, the following, among other, proceedings were had, to wit:

J. FRANCISCO CHAVEZ
vs.
THE UNITED STATES.

The above-entitled cause having been called for trial, there appeared F. W. Clancy, Esq., for and on behalf of the plaintiff. Summers Burkhart, Esq., assistant U. S. attorney, and Matt. G. Reynolds, Esq., U. S. attorney, appeared for and on behalf of the said defendant, The United States. The parties herein having announced themselves ready, the trial of the cause was proceeded with on the pleadings presented. Witnesses were presented and examined, oral and documentary proof was produced, after which the cause was partially argued and submitted.

36 And be it farther remembered that on the trial of the said cause the following proceedings were had, as shown by the transcript of the notes of the official stenographer of said court; which transcript was and is in the words and figures following, to wit:

37 In the U. S. Court of Private Land Claims, District of New Mexico.

J. FRANCISCO CHAVES, Plaintiff,
vs.
THE UNITED STATES, Defendant.

Involving the property claimed under the grant to Nerio Antonio Montoya.

Now, at this day, to wit, the 2nd day of March, A. D. 1896, appear the parties by their respective counsel, Mr. F. W. Clancy, for plaintiff, and M. G. Reynolds and S. Burkhart, for the defendant, and, announcing themselves ready for trial, the following proceedings were had:

Mr. CLANCY: I offer in evidence the original petition and papers described in the amended petition as included in Exhibits "A" and "B," being the Spanish and English from the office of the surveyor general of this Territory, showing what is claimed to be the grant.

(The same are identified as Exhibits A and B respectively.)

Mr. BURKHART: We object to their introduction on the ground that they are not archives and because they are not and do not purport to be the originals in this case, but are copies made by no one authorized under the law to make authenticated copies, and, further, because the said documents are not authenticated by any one.

By the COURT: Admitted subject to the objection.

Mr. CLANCY: I also offer in evidence a deed from the original grantee, Montoya, to Juan Perea, which appears as a part of Exhibit A and a translation of which is included in Exhibit B filed in this case.

It is admitted by the defendant, The United States, that J. Francisco Chaves, the plaintiff herein, has succeeded to all the rights of the original grantee, if any, in this case.

Mr. CLANCY: Very well. I now desire to offer in evidence the original papers of the grant to the town of Torreon, which come from the office of the surveyor general, copies of the official translation of which are already on file in this case.

(The same will be identified as Exhibit C herein.)

38 Mr. CLANCY: I desire to offer in evidence, from the archives of the office of the surveyor general, a letter from Jose Antonio Chaves, at that time governor of New Mexico, and addressed to Miguel Olona. This is dated December 22, 1831, and Olona is the officer who put the grantee in possession.

Mr. BURKHART: We object to it on the ground that it is immaterial and incompetent.

Between counsel it is agreed that there is no contest as to the genuineness of the paper just introduced.

FRANCISCO SANCHES LOPEZ, introduced as a witness on behalf of the petitioner, testified through the medium of the official interpreter as follows:

Direct examination by Mr. CLANCY:

Q. What is your name?
A. Francisco Sanchez Lopez.
Q. Where do you live?
A. Tajique.
Q. In the county of Valencia?
A. Yes, sir.
Q. How old are you?
A. I do not know how old I am, but I am very old.
Q. Do you remember when the American soldiers came into this country?
A. Yes; then they went over into Chihuahua.
Q. How old were you at that time, do you remember?
A. Yes; I was already a grown man—a laborer.
Q. Did you ever know a man by the name of Nerio Antonio Montoya?
A. Yes; we lived right near his house.
Q. Where was his house?
A. Here at Peralta.
Q. Do you know a place that is called the Ojo de en Medio or Ojo del Cochino?
A. Yes; I know that well.
Q. How far is that place from Tajique, where you live?
A. About half a mile, probably less, from Tajique to the spring.
Q. Which spring?
A. Cochino.
Q. How long have you lived at Tajique?
A. I was the first settler there, and I knew the place before it was settled.
Q. How long ago was that?
A. I do not know; I cannot read.
Q. Did you ever know of Nerio Antonio Montoya having any connection with that place—that is, near Ojo del Cochino?
A. Yes; he had his lambing stations and some shanties there.
Q. When did you first know of his having any shanties or houses at that place?
A. He stayed there a long while; I think it was over seven years.
Q. How old were you when he first came there?
A. I have already said I was a full-grown man—a laborer.
39 Q. Do you know whether he had his houses there before or after the time the Americans came through here?
A. I think it was before the Americans came here.
Q. How long before?

Mr. REYNOLDS: Now, I object to this way of examining a witness This witness has testified all he knows about it, and his examina-

tion has no purpose but suggesting to the witness certain answers and is not direct examination by any means.

Objection overruled.

A. I don't know how long a time it was, but it was a very long time before.

Q. Do you know the place where Torreon was settled?

A. Yes; very well.

Q. Were those houses of Nerio Antonio Montoya at the Ojo del Cochino before or after Torreon was settled?

A. Before.

Q. Do you know how great a length of time they had been there before Torreon was settled?

A. I do not know, but it was a long time. At that time nobody lived at Torreon yet.

Q. Do you know why that spring is called Ojo del Cochino?

A. That name was given it because it had large numbers of swine there; that is why it is called that.

Q. Do you mean that Nerio Antonio Montoya had swine there?

A. Yes, sir; and many of them.

Q. Do you know whether he cultivated any portion of the land at or near that place?

A. He cultivated places right near the house that he had fenced up.

Q. Was that near the spring which you have testified was the Ojo del Cochino?

Objection made to the form of the question; withdrawn.

Q. Where was the land which Montoya cultivated with reference to the spring called the Ojo del Cochino?

A. The houses were on other side of the arroyo, and the cultivated lands were on this side of it.

Q. Do you know a place in that vicinity called the Canada del Cuerbo?

A. Yes; and there is a spring there.

Q. What is it called?

A. The Cuerbo spring.

Q. Where is the Canada del Cuerbo with reference to the spring called Ojo de- Cochino?

A. The Ojo del Cochino is here (indicating with his hand), and in this direction the Canada del Cuerbo lies (indicating to the southeast).

Q. Is the Canada del Cuerbo north or south of the Ojo del Cochino?

A. It lies in that direction (pointing again to the southeast).

Q. Do you know a place in that vicinity which is called the Rancheria de los Apaches?

A. Yes, sir; that is below.

Q. Below what?

A. The Ojo de los Cochinos.

Q. Do you remember when, if ever, Montoya relinquished possession and control of the land about which you have been testifying?

Mr. BURKHART: I object to the form of that question. He has introduced a deed here which shows that the grantee sold the land to Juan Perea, and the deed itself shows when he relinquished possession.

Mr. CLANCY: I desire to show how long Nerio Antonio exercised control over that land, and further that, as a matter of fact, the people of Torrion never have asserted their claim as far as the surveyor has extended it—that's what I am leading up to—that this present claimant and those under this grant have had possession under this grant for many years down to the points described in our petition, and that their claim has been recognized by the inhabitants of Torreon, and I now state that part of the land claimed in our amended petition is embraced within the survey and patent of the Torreon grant.

By Mr. REYNOLDS: He may go on and examine the witness, then.

Q. Do you remember when, if ever, Montoya relinquished possession and control of the land about which you have been testifying?

A. He was living at Peralta when he went to Torreon.

Q. When did he leave, if ever he did leave, his land at the Ojo del Cochino?

A. He did not leave it until he died. He paid it to Don Mariano.

Q. Mariano who?

A. Father of Don Francisco Chaves.

Q. Have you any knowledge why he paid it to Don Mariano?

A. He lost a herd of sheep.

Q. To whom did the herd of sheep belong?

A. Don Mariano.

Q. After that time who had control and possession of that land?

A. Don Francisco Chaves.

Q. Do you know to what place towards Torreon Don Francisco had possession?

I object to the question as incompetent and immaterial.

No ruling.

A. From his house way down—from the house where he was for a long time until his house fell down; he was cultivating that place.

41 Q. Do you know how far or to what points towards Torreon his lands extended?

Mr. BURKHART: Object to that because the grant papers themselves are the best evidence of the extent of the grant.

No ruling.

A. To the rancheria. That is what we call it.

Q. Do you know in what direction the Ojo del Cuerbo is from the rancheria?

A. Yes, sir; it lies in this direction (indicating southward).

Q. Do you know what has been generally recognized by the

people of Torreon as the boundary between their lands and this land of Don Francisco Chaves?

Mr. BURKHART: I object to that on the ground that the papers themselves show what the boundaries are.

By the COURT: Objection sustained.

Cross-examination by Mr. BURKHART:

Q. Nerio Antonio Montoya lived at his Peralta ranch a long time, didn't he?

A. Yes, sir.

Q. How far from his house did you live?

A. Right near him.

Q. Did you go to Tajique while he was still living at Peralta?

A. I went first to Tajique and remained there.

Q. After he left Peralta he went to Torreon to live, didn't he?

A. Yes, sir; he went to Torreon, but he had already bought the ranch at Peralta of Don Mariano.

Q. At the Ojo del Cochino he had corrals for his sheep, didn't he?

A. Yes, sir; at the old farm.

Q. He never lived there, did he?

A. Yes; he lived there a long time.

Q. At the spring?

A. Yes; at the Ojo del Cochino.

Q. After he went to Torreon or before?

A. After he paid he went to Torreon.

Q. What kind of houses did he have there?

A. Shanties.

Q. Where did his family live?

A. There at that ranch. When he bought it he made shanties at the Torreon.

Q. What kind of a house did he have at that spring?

A. I say that he had shanties made out of timber.

Q. He lived at Peralta until he went to Torreon to live, you say?

A. Yes, sir.

Q. How far is it from the town of Torreon to the Ojo del Cochino?

—. ——.

42 Q. How near?

A. It is very near; there is only the bend of the cañon between.

Q. Is the spring in the cañon?

A. Yes.

Q. How wide is the cañon?

A. It is very wide.

Q. What do you mean by very wide?

A. The cañon is very wide and an arroyo runs through it.

Q. How many varas wide is the cañon?

A. I cannot state how many varas.

Q. Is there water in that arroyo?

A. Yes.

Q. How large a family did Nerio Antonio Montoya have?

A. Very large family; there were many children.
Q. Was it before or after the Americans came to this country that Don Nerio sold to Don Mariano?
A. I think he paid it to him before the Americans came in.
Q. Did not Don Mariano go right into possession as soon as Don Nerio sold to him?
A. Yes; started farming it at once.
Q. And then Don Francisco come there just after it was sold?
A. I suppose he was there.
Q. Don't you know anything about it?
A. No; I do not know for certain. I did not see him then.
Q. Where did Don Mariano live before?
A. When he paid him he was living at Bosque—Bosque de los Pinos.
Q. And where did he live, then, after he paid him?
A. He lived at Bosque de los Pinos.
Q. Where is Bosque de los Pinos?
A. It is on this side of Peralta. It is on the bank of the river—the Rio Grande.
Q. Did Don Francisco ever come to the Ojo del Cochino to live?
A. He lived there.
Q. Was that before or after the Americans came in?
A. The Americans had already come in when he was living there at his house.
Q. How long after the Americans come in?
A. He lived there for a long time, and the houses began to be dilapidated, and he changed his residence to the river again.
Q. How long after the Americans come in was it that Don Francisco Chaves went there to live?
A. I cannot remember.
Q. Was it a long time or a short time?
A. I do not remember; I do not know.
Q. Did Don Mariano ever live there?
A. No.
Q. Did Don Nerio have his family at Ojo del Cochino or at Torreon?
43 A. Yes; he had them at Ojo del Cochino, and when he delivered up the Ojo del Cochino he moved them to Torreon.
Q. Where did Don Nerio go from Peralta to live?
A. Torreon; he remained at Torreon.
Q. But he lived at Peralta?
A. Yes.
Q. And went from there to Torreon?
A. Yes, sir.

Redirect examination:

Q. When you first went to Tajique was it before or after Montoya was at Ojo del Cochino?
A. We had been living a long time at Tajique when he went to Torreon.

Q. I didn't ask you when he went to Torreon, but when he went to Ojo del Cochino. At the time you went to Tajique was he or not living at Ojo del Cochino?

A. Yes, sir; he was living there already and lambed there.

Q. Will you please describe how those jacales which you say Nerio Antonio Montoya had at Ojo del Cochino—how they were built?

A. They were made in that direction, with the doors towards the north.

Q. How high were they above the ground—the houses?

A. They were not very high. They were forks stuck in the ground and timber placed around on them.

Q. What kind of roofs did they have?

A. Oak plank placed on the top.

Q. Are there any such houses in that part of the country now?

A. Yes; there are some shanties there of that description.

Recross-examination:

Q. Mr. Sanches, isn't it true that Mr. Montoya lived at Peralta and would go up to Ojo del Cochino occasional-y to lamb his sheep there?

Mr. CLANCY: I don't think that is a fair question the way it is put, but I shall not object to it. I certainly do not think it is fair.

A. Yes; he went there.

Q. What kind of a house did Montoya have at Peralta; was it a large house or a small house?

A. It was a round adobe house.

Q. It was not a jacal?

A. No, sir.

Q. Are there any adobe houses at Torreon?

A. Yes; there are.

Q. Aren't most of the houses at Torreon adobe?

A. No; there are some adobe and some jacales.

Q. When Mr. Montoya farmed the land he used to go from Peralta to farm, didn't he?

A. Yes; he did; but he always had his ranch there with his sheep.

44 Q. But he lived down at Peralta?

A. At that time he lived at Peralta.

Q. How long had you been at Tajique when Mr. Montoya come to Torreon to live?

A. I do not know. It was many years already.

Q. You are one of the grantees of the Tajique grant?

A. Yes.

Q. How long had you been at Tajique when the grant was made?

A. I do not know how long a time. I do not understand how to calculate the time.

Q. Was the grant to the people of Tajique made before the grant to the people of Torreon?

A. I think the grant to Tajique was first.
Q. Was the grant to the people of Tajique made before Montoya come to Torreon to live?
A. No, sir.
Q. He come to Torreon to live before the grant was made to Tajique?
A. Yes; they attempted to settle that place first.
Q. Was Tajique settled before Montoya left Peralta?
A. Yes; Tajique was already settled.
Q. Had it been settled a good many years before Montoya left Peralta?
A. He took that ranch there at the time Tajique was settled.
Q. He still lived in Peralta, didn't he, *went* he took that ranch?
A. Yes.
Q. He lived there many years after you went to Tajique?
A. Yes; he lived at Peralta many years.
Q. He lived a long time at Peralta after you went ta Tajique to live, did he not?
A. Yes, sir.
Q. And then moved from Peralta to Torreon?
A. Yes, sir.

Redirect examination:

Q. Did Nerio Antonio Montoya always live at Peralta until he went to Torreon to live?
A. Yes; he lived at Peralta until he come to Torreon to live.
Q. Had he *never* lived anywhere else than Peralta?
A. No, sir.

Mr. CLANCY: I ask the permission of the court to put this question to the witness: Did you not testify awhile ago that Montoya with his family lived at Ojo del Cochino? I ask this because I think the witness has been confused.
By the COURT: He may answer the question.
A. Yes, sir; he was there with his family during the lambing season.

Witness excused.

45 J. FRANCISCO CHAVES, the petitioner, sworn as a witness in his own behalf, testifies as follows:

Direct examination by Mr. CLANCY:

Q. State your name, age, and residence.
A. J. Francisco Chaves. I live at Progreso, Valencia county, New Mexico. I am sixty-two years old.
Q. Are you the claimant in this case?
A. I am.
Q. When did you first become acquainted with the land claimed in this case?
A. I only became personally acquainted with it in 1858.

Q. How well did you become acquainted with the land at that time?

A. I think as thoroughly as a man could become acquainted with such land by living upon it and traveling over it.

Q. When did you live upon it and for how long?

A. From 1858, for about nine years, and expended about ten thousand dollars in building houses.

Q. On what part of the property was that house built?

A. About five hundred varas north of the eastern boundary, in the cañon of the Ojo de Cuerbo and south of the Ojo de en Medio.

Q. W-re there any houses at the Ojo del Cochino when you became acquainted with the land?

A. There were ruins; there were a number of ruins of jacales. I used them for wood while I was building my houses.

Q. Will you describe briefly those jacales?

A. If they are of one room only, you take four poles, each of which is to be one of the corners, and these—one end is put in the ground, and on the other, usually for convenience, there is usually a fork at the top. They are buried in the ground about two feet. Then there is a beam stretched across the lengthy way of the house, and this is put between these forks, and then this is covered over with suitable brush or timber. Then all around, running to these four corners, they dig a ditch in the ground about six inches deep, and into this brush of oak or ceder, cut the proper length, is stood up so as to make the walls and then securely packed down. Of course, they are not all alike, but this is the general plan.

Q. Are there any such houses in the Rio Grande now?

A. Very rarely. Sometimes you will find them when there is timber near.

Q. In that part of the Rio Grande, the valley of the Rio Grande, are such houses built?

A. I have never seen any there.

Q. During the time that you first knew anything about this land and since, what, if any, possession and control have you had over it?

Mr. BURKHART: Object to that as incompetent and immaterial. It makes not difference what possession or control has been
46 exercised since 1848. Petitioner's rights must depend upon what was done prior to that time.

By the COURT: Objection sustained.

Q. Did you ever know the original Nerio Antonio Montoya?

A. I knew him very well.

Q. When did you first know him?

A. In 1841.

Q. Where did you know him?

A. At that time at Peralta. That's the first place I met him.

Q. For how long a time after that did you know him?

A. Until his death. That, I believe, occurred somewhere about 1862.

Q. During the time *you* that you knew him where did he live?

A. He lived most of the time I knew him at Torreon—when I

knew him personally—but when I first met him he lived at Peralta.

Q. Well, when did he go to Torreon to live after that?

A. I think he went there—although I am not certain about the year—just about the time the American troops under General Kearney came into this Territory—in 1846.

Q. Have you any knowledge as to when—as the witness stated here—he "paid" this property to your father?

A. I know from Don Nerio Antonio Montoya himself that he paid over this property in question and the house he was then living in at Peralta to the administrator of the estate of my grandfather, and my father was that administrator for my grandfather and my grandmother both. He was then living in Peralta. Don Nerio was then living on this property and received permission to live in that house at Peralta. From what he said when he went there he turned over the property soon after, I think, he gave up the house. I think he only had possession of it for about four years, but he turned over the property at that time and the administrator accepted it, but the deeds were not made out at that time; not until 1846 or 1848. My father, who was the administrator, died in the meantime.

Q. Now, in what year did your father die?

A. My father died in the year 1845.

Cross-examination by Mr. BURKHART:

Q. Col. Chaves, do you know the boundaries of the Bartolome Baca grant?

A. Yes, sir.

Q. You were a witness before this court in the Bartolome Baca case, were you not?

A. Yes, sir.

Q. You testified to the boundaries at that time?

47 A. I don't remember whether I was asked the question or not, but I know the boundaries.

Q. This Nerio Antonio Montoya grant is entirely within this Bartolome grant, as it was claimed before this court?

A. Yes, sir.

Q. Do you remember when General Kearney came into this country?

A. Yes, sir. I was interpreter for General Kearney. I happened to be there when he came in with the troops and interpreted for him. I was thirteen years old at the time.

Q. What was your father's name?

A. Mariano Chaves.

Q. And he died in 1845?

A. Yes, sir.

Q. Where did your father live?

A. He lived at the Bosque de los Pinos.

Q. About when did he turn this estate over to your father? When did Nerio Antonio Montoya turn this estate over to your father for the estate of your grandfather?

A. I don't know exactly; I think about 1841.
Q. How long did he live at Peralta after 1841?
A. I think up to 1846.
Q. Colonel, the Ojo de en Medio is in the same cañon as the Ojo del Cochino?
A. Yes, sir. They are not the same spring, but are in the same cañon.
Q. How far apart are they?
A. About three-quarters of a mile.
Q. In which direction is the Ojo del Cuerbo from the Ojo de en Medio?
A. East.
Q. What is that cañon called?
A. The people call it the Cañon de los Cochinos.
Q. How wide is that cañon?
A. In some places it is a quarter of a mile.
Q. It is not a box cañon, then, at any place?
A. It is not narrow up there at the Ojo de en Medio; it is quite wide. The spring there is not in the cañon; it is way up above, in marshy ground.
Q. Outside of the cañon, what is the character of this grant?
A. From the Ojo de en Medio towards the south it is rolling in character; some open places and valleys that can be cultivated.
Q. Any water on it?
A. None except at the Cuerbo.
Q. Between the Cañon del Cuerbo and the cañon in which the Ojo de en Medio is situated there is no water, is there?
A. No, sir; it is timber and open valleys.

Redirect examination by Mr. CLANCY:

Q. State whether or not it is possible to cultivate land on that side of the mountains without irrigation.
A. Yes, sir; it is.

48 Recross-examination:

Q. All of the lands that have been cultivated on that grant are in that cañon, are they not?
A. No, sir.
Q. You don't know what was on that grant before 1848, do you?
A. Only from statements made by Nerio Antonio Montoya and other people who lived there and in the vicinity of that place.
Q. How much of the land in that tract is susceptible of cultivation?
A. I presume somewhere in the vicinity of two thousand acres. That is unirrigated. You might irrigate about one hundred acres. That's about all the water there is.

Witness excused.
Petitioner rests.

For the Government:

Mr. BURKHART: I wish to introduce the proceedings of the provincial deputation, taken from the records of that body, for the eleventh of November, 1831.

I also desire to offer in evidence, from the same book, the record of the proceedings of the territorial deputation of New Mexico at the session held on the 12th of November, 1831, copies and translations of which have already been filed.

It is admitted that the land embraced in the present claim lies within the exterior boundaries of the Bartolome Baca grant, which was confirmed by this court to the extent of eleven leagues, as shown by the decree which the United States wishes to introduce in evidence here.

Mr. BURKHART: We now offer in evidence the decree of this court in the Bartolome Baca case.

The United States rests.

Case closed. Argument by counsel. Submitted.

I hereby certify that the above and foregoing contains a full, true, and correct transcript of all the proceedings had in this cause upon the trial of the same on the 2nd day of March, A. D. 1896.

LYMAN F. PARKER, JR.,
Official Stenographer.

Santa Fé, N. M., Sept. 1, 1896.

(Claimant's Exhibits A and B appear in the earlier part of this record, immediately following the original petition.)

49 (EXHIBIT C REFERRED TO IN FOREGOING TRANSCRIPT.)

Grant—Spanish.

Sello. (Sello.) Dos Reales.

Pra los anos de mil ochocientos cuarenta y mil ochocientos cuarenta y una.

En esta jurisdicion de Valencia a los quinso dias del mes de Febrero de mil ochocientos quarenta y uno, ante me el C. Vincente Otero Juez de Paz suplente de dicha jurisdicion, y las testigos de mi asistencia, comparecieron veinte y siete individuos de esta mismo jurisdicion diciendo que en virtud de no tener terreno en que poder cultivar tierra para poder mantenar sus familias estan propuestos a pedir el punto del Torreon, y que a cuyo fin, confieren por este, todo su poder y amplio, a Don Nerio Antonio Montoya para que a su nombre y representacion de sus propios personas derecho y acciones, solicite la merced del espresado punto del Torreon, a donde corresponde, y para los fines que son consiguientes, estiendo el pre-

sente poder firmandolo con los testigos de mi asistencia de que doy fee.

VINCENTE OTERO.

De asistencia: JOAQUIN ALARIA.
De asistencia: JUAN SANCHES.

Admito el atecedente poder.

NEREO ANTO. MONTOYA.

Senor Prefecto D. Antonio Sandobal:

El C. Nereo Antonio Montoya vecino de Valencia por se y a nombre de los individuos que cita el ajunto poder ante V. S. con el devido respecto paresco y digo; que viendome escaso tanto yo como mis poderantes, de terreno de labor para la manutencion de nuestras familias y hallandose libre sin perjuicio de tercero el ojo del Torreon, cuya veracidad de las tierras que esta bana prometan una esperanza muy ventajosa en la agricultura cosa muy bien recomendable por nuestras sabias leyes, bajo estos principios paso vendidamente a suplicar a V. S. se sirva en nombre de la nacion concedernos el goce de dicho terreno en los terminos siquientes; que del ojo ya citado para el Norte con las tierras de Tajique que habra cosa de ochocientos varas para el sur una legua, para el oriente hasta donde alcanza la agua y por el poniente hasta el rancho de mi pertenencia que habra cosa de quinientas varas, por lo espuesto.

H. V. S. pido y suplico se me conceda lo que pido, para que se nos estienda la merced de estili sin perjuicio de los derechas judiciales con lo que reciveremos merced.

Albuquerque, Febrero 16 de 1841.

NEREO ANTONIO MONTOYA.

BARELAS, *Febrero* 23 *de* 1841.

Pasa esta instancia al Juez de Paz de Tome para que informe circumstanciadamente tanto sobre si los licantes tienen terrenos de que subsistir, como si el que solicitan es baldio y no pertenece a alguna persona y la naturaleza del terreno.

SANDOBAL.

FRANCISCO SARRACINO, *Secretario.*

TOME, *Marza* 3 *de* 1841.

En cumplimiento al Decrete del Sov. Prefecto Don Antonio
50 Sandobal fecha 23 del proximo Febrero, digo que los individuos anotados en la ajunta lista me he informado no tienen tierras sufficientes en que subsistir y el terreno solicitado ofrece las ventajas que el presentante espone en su antecedente presentacion, no es perjuicio de terceros y esta baldio. So tachado no vale.

JUAN DE JESUS CHAVEZ.

BARELAS, *Marzo* 3 *de* 1841.

Por lo que resulta del anterior informe parece no haber obstaculo para concedar a los liciyantes la gracia que solicitan, en tal virtua pase esta instancia al Juez de Paz de Tome D. Juan Chavez para

que pase a dar la posesion que por esta Prefectura se les concede nacional y personalmente en el nominado terreno cuya posesion formalo zara el dicho Juez a nombre de la Nacion Mejicana (Q. D. G.) con todas las solemnidades de estilo y sin perjuicio de tercero, dejandro libres los pastos, lenaderos, cortes de madera, a caminos acostumbrados, solo para labor plaza corrales y demas usos comunes y necesarios senalandoles el terreno sufficiente para uno y otro sopena de nulidad si incurrieren en alguna falta, y en la misma incurriran si no cultivan la tierra dentro del termino prevenido por las leyes; a cuyo efecto el predicho juez formara el expediente correspondiente, y con la dara cuenta a esta Prefectura para que quede archivado en sus registros.

ANTONIO SANDOBAL.

FRANCISCO SARRACINO, *Secretario.*

En esta jurisdicion de Tome a las diez del meo de Marzo del ano de mil ochocientos cuarenta y uno yo el juez de Paz de dicha jurisdicion C. Juan de Jesus Chavez, en virtua de la comision que me es conferida por el Sov. Prefecto del Segundo Distrito D. Antonio Sandobal por el anterior decreto de tres del corriente, y en cumplimiento de dicho decreto pase el puesto del Torreon y hallandome en el citado parago con situacion de Don Nerio Antonio Montoya y los demas pobladores que constan en la ajunta lista a quienes les hise saber la merced que antecede y no haviendo resultado contradicion de partes, pase con los testigos de asistencia que al efecto nombre a reconocer el terreno, y tirando las medidas de Norte a Sur una legua de el terreno, y torando las medidas de Norte a Sur una legua de oriente a poniente legua y media, y les puse por linderos de Norte a sur el lindero de Tajique por el Norte, sur el serro del Cuerbo, Poniente el lindero del rancho del sitado Don Nereo Antonio Montoya dentro de estas medidas les medi a cada poblador cien varas tierra para lavor tirados de oriente a poniente, a mas de las cien varas en donde les senale la plaza para corra les y demas usos comunes les di a cada poblador un pedaso de tierra para huertas immediatas a la misma plaza pues asi me pidieron lo que los concedi como queda dicho, a Don Nereo Antonio Montoya le di a mas de las cien varas que tiene senaladas el ancon que esta al Norte del mismo serro del Torreon, a Mauricio Sanches le di por suerte el anconsisto del rancho del Finado Don Bartolome Baca al sur hasta el camino acostumbrado del canon de los Comanches oriente hasta el camino de Tajique, Norte el Rio, Poniente a donde el ojo que les concedi para que las go sen por si sur hijos herederos y subsesores, cultivades dichas tierras en el termino de la ley todo lo que les concedi nacional y personalmente a nombre del Supremo Gobierno
51 de la Nacion Mejicana (Q. D. G.) a cuya masa pertenecemos quedando advertidos los dichos pobladores del sitado decreto del Sov. Prefecto y en cuya los cogi de là mano los pasie poriachas tiaras tiranon piedras arrancaron sacates dieron voces diciendo todos a una vos viva el Supremo Gobierno de las Nacion Mejicana (Q. D. G.) y en senal de verdadera posesion la que les di y aprendieron quieta y pacifica sin contradicion, y para que conste lo puse por

diligencia que firmecon los de mi asistencia con quenes antuo a falta de escribanos que no los hay en este Departmento en dicho dia mes y ano de que doy fee como dicho es. Se entre renglon C. Juan de Jesus Chavez, vale.

JUAN DE JESUS CHAVEZ.

Asistencia: JUAN LUERA.
Asistencia: ANTONIO BARELA.

Otro si por no haber citado los linderos de las tierras de labor que les senale lo pongo eneste auto, y son de Norte a Sur desde la Mecita que esta al el otro lado del Rio, sur las asequia madre en donde quedan dose varas libres para que yransitan y saquen sus consechas los referidos pobladores doy fe fecha.

JUAN DE JESUS CHAVEZ.

Asistencia: JUAN LUERA.
Asistencia: ANTONIO BARELA.

52 (TRANSLATION OF EXHIBIT C.)

Seal third. (Seal.) Two rials.

For the years one thousand eight hundred and forty and one thousand eight hundred and forty-one.

In this jurisdiction of Valencia, on the fifteenth day of February, in the year one thousand eight hundred and forty-one, before me, Citizen Vicente Otero, substitute justice of the peace of said jurisdiction, and my attending witnesses, appeared twenty-seven individuals of this same jurisdiction, who stated that, having no land to cultivate to procure the means of supporting their families, they have determined to ask the site called Torreon, and for that purpose they hereby confer ample authority upon Don Nerio Antonio Montoya, in their name and representing their persons, rights, and interests, to solicit a grant to the aforementioned site of Torreon from the proper authority, and for the benefit of whom it may concern I have executed this power of attorney, signing the same with my attending witnesses, to which I certify.

(Signed) VICENTE OTERO.

Attending:
(Signed) JOAQUIN ALARID.

Attending:
(Signed) JUAN SANCHEZ.

I accept the foregoing trust.
(Signed) NERIO ANTONIO MONTOYA.

Seal third. (Seal.) Two rials.

For the years one thousand eight hundred and forty and one thousand eight hundred and forty-one.

To the hon. prefect, Don Antonio Sandoval:

Citizen Nerio Antonio Montoya, a resident of Valencia, for himself and in the name of the individuals contained in the accom-

panying power of attorney, appear before your honor with all due respect and state that myself as well as my clients being short of tillable land for the support of our families, and the Torreon spring being unoccupied, and the fertility of the soil it waters being such that it promises to yield a bountiful crop and be a benefit to agriculture—a purpose so much recommended by our wise laws—for these reasons I humbly pray your honor to grant us without injury to third parties the above-mentioned lands in the name of the nation, with the following boundaries: From the spring above mentioned towards the north with the lands of Tajique, a distance of about eight hundred varas, to the south one league; on the east as far as the water reaches, and on the west to the farm belong-
53 ing to me, being a distance of about five hundred varas; in view of all of which I pray and request your honor to grant our petition, in order that the customary title deed may be executed without injury to judicial rights, by which we will receive grace.

Albuquerque, February 16, 1841.

(Signed) NERIO ANTONIO MONTOYA.

BERELAS, *February* 23*d*, 1841.

This petition is referred to the justice of the peace of Tome to report fully if the petitioners have any lands from which to obtain their subsistence, and also if the land they ask for is vacant and belongs to no one, and what is the nature of the land.

(Signed) SANDOVAL.

(Signed) FRANCISCO SARRACINO, *Secretary.*

In compliance with the decree of the prefect, Don Antonio Sandoval, dated on the 23d of February last past, I have to report that I have ascertained that the persons contained in the accompanying list have not lands sufficient to subsist upon, and that the land solicited offers all the advantages the petition claims for it. It will not injure any third party and is unoccupied. (What has been erased is void.)

Tome, March 1st, 1841.

(Signed) JUAN DE JESUS CHAVES.

BARELAS, *March* 3*d*, 1841.

From the foregoing report it appears that there is no obstacle in granting the request of the petitioners; therefore these proceedings are referred to Don Pedro Chaves, justice of the peace of Tome, in order that he may proceed to give them the national and personal possession of the land granted by this prefecture; which possession will be formally made in the name of the Mexican nation (which may God preserve), with all the customary solemnities and without injury to third parties, leaving pastures, wood, timber, and customary roads free, excepting lands for cultivation, town-site enclosures, and for other necessary and common uses, giving a sufficient amount of land to each one, under penalty of forfeiture if they com-

mit any crime or if they fail to cultivate the land within the time prescribed by law, for which purpose the aforesaid justice will take such steps as may be necessary, reporting the same to this prefecture in order that it may be filed in its archives.

(Signed) ANTONIO SANDOVAL.

(Signed) FRANCISCO SARRACINO, *Secretary.*

54 Interlined is valid.

(Signed) JUAN DE JESUS CHAVES.

Attending:

(Signed) JUAN LUNA.

Attending:

(Signed) ANTONIO BARELA.

ADDENDA.—Not having mentioned the boundaries of the tillable lands I measured out for them, I state them in this decree, and they are from north to south from the little table-land on the opposite side of the river, south the main ditch (acequia madre), where twelve varas are left free for a road and to allow the said settlers to transport their crops. I certify date *ut supra.*

(Signed) JUAN DE JESUS CHAVES.

Attending:

(Signed) JUAN LUNA.

Attending:

(Signed) ANTONIO BARELA.

SURVEYOR GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT,
SANTA FÉ, NEW MEXICO, *June 15th,* 1859.

The foregoing is a correct translation of the original on file in this office.

DAVID V. WHITING, *Translator.*

55 In this jurisdiction of Tome, on the tenth day of March, one thousand eight hundred and forty-one, I, Citizen Juan de Jesus Chaves, justice of the peace of said jurisdiction, by virtue of the commission entrusted to me by Don Antonio Sandoval, prefect of the second district, in the foregoing decree of the third instant and in compliance with said decree, I proceeded to the site of El Torreon, and, being then there, having summoned Don Nerio Montoya and the other settlers whose names appear on the accompanying list, to whom I made known the foregoing grant, and no question having arisen, I proceeded, with two attending witnesses, whom I appointed for the purpose, to examine the land, and, measuring from north to south one league and from east to west one and one-half league-, I gave them from north to south as their northern boundary the boundary of Tajique, on the south the Cuervo mountain, east the junction of the Torreon cañon with that of the Cuervo, west the boundary of the farm of Don Nerio Montoya. Within

these boundaries I gave to each settler one hundred varas of land for cultivation, measured from east to west. In addition to the one hundred varas I assigned to them for building the town, enclosures, and other common purposes, I gave to each settler a piece of land immediately adjoining the town for gardens, considering the same to be just, and having been requested to do so by the settlers, which request I complied with, as aforestated. In addition to the hundred varas above mentioned, I gave to Don Nerio Montoya the valley which is north of the Torreon mountain. I gave to Mauricio Sanchez, for his share, the little valley of the farm of the late Bartolomé Baca to the common road of the Cañon de los Comanches towards the south, on the east to the Tajique road, on the north the river, and on the west to the source of the spring; which I gave them to hold for themselves, their children, heirs, and successors, said lands to be cultivated within the period prescribed by law; all of which was granted nationally and personally in the name of the Mexican nation (which may God preserve), to which they belong. The settlers being notified of the aforementioned petition of the honorable prefect, I took them by the hand, walked with them over the land, they threw stones, pulled up grass, and all at one time cried, Long life! long life! to the supreme government of the Mexican nation (which may God preserve); and in testimony of legal possession which I gave them, and they received quietly and peaceably, without opposition, and in order that it may so appear, I placed it on record, signing the same with my attending witnesses, with wjom I act in the absence of notaries, there being none in this Territory, on said day, month, and year; to which I certify, as above stated.

CITIZEN JUAN DE JESUS CHAVES.

56 *Provincial Deputation.*

Secion del 11 de Novre de 1831.

Leyda y aprovada la acta antōr se dió cuenta con una esposicion del Sōr. Martinez en que manifiesta el que careciendo esta corporacion de facultades con qe remediar los muchos y graves males que aflixen á este Territorio, cré inutil su ecsistencia y perjudicial á los individuos que la componen, concluyendo con pedir se de cuenta con dhā. exposicion al Congreso General, y en el interin aquella soberania resuelve lo conbeniente continue sus Seciones S. E. Se mandó pasar á Comision en los Sres. Abreu, Ortis y Quintana. Se dio cuenta con un ofō. del Preceptor de 1as letras de esta capital en que havisa la morosidad y abandono de los Alcaldes y Ayuntamto de esta ciudad para hasér concurrir niños á la enseñanza, advirtiendo que no solo han sido desatendidos sus reclamos sino que se han despreciado las estrechas orns. del Sōr. Gefe Politico que ha librado al ejecto. Se mando transcrivir al expresado Sōr. gefe para que con multas y todo lo demás que juzque conbeniente Se Se ye se halle en la orvita de sus facultades apremie á los Alcaldes y Ayuntamto hasta hasér que la escuela esta asistida de niños, y vigilen sobre el cumplimento del Preceptor.

Se dio cuenta con un oficio del Sõr. Gefe Politico con que incluye ejemplares de los Dtõs. que ha recivido en el tiempo que S. E. ha estado en resezo. Se mandaron archivar.

57 Se dio cuenta con un informe del Ayuntamiento del Bado puesto á consecuencia de una instancia hecha por varios individuos de aquella yurisdiccion impetrando se les done para labor el terreno conocido con el nombre del macho, en cuyo informe se justifica no haver obstaculo para la donación que se pide. Se mando conseder.

Se dió asimismo cuenta con un oficio del Ayuntamiento de la Cañada en que pide se le suministran sincuenta p^{s} para utencilios de la escuela de aquella Villa. Semandaron negar.

Se levantó la Secion.

JOSE ANT^{o}. CHAVES. [SCROLL.]
SANTIAGO ABREU. [SCROLL.]
JUAN RAFAEL ORTIS. [SCROLL.]
AN$^{TO.}$ JOSE MARTINES. [SCROLL.]
TEODOZIO QUINT^{A}. [SCROLL.]
RAMON ABREU, *Srio.* [SCROLL.]

58 *Provincial Deputation.*

Translation of session of the 11th of November, 1831.

The preceding journal having been read and approved, a memorial of Mr. Martinez was taken up, in which he sets forth that as this corporation is without power to remedy the many and grave evils that afflict this territory, it believes its existence useless and prejudicial to the members of which it is composed, concluding by asking that this memorial be laid before the general congress, and that until that sovereign body decide what is proper its excellency continue its sessions. It was ordered to be referred to a committee composed of Messrs. Abreii, Ortiz, and Quintana.

An official communication from the teacher of the primary school of this capital was taken up, in which communication he calls attention to the delay and failure of the alcaldes and ayuntamiento of this city in causing children to attend school, remarking that not only have his requests been unnoticed, but also the strict orders which the political chief has issued on the subject have been ignored. It was ordered that a copy be *said* to the said chief, in order that by the imposition of fines and all means which His Excellency may deem proper and which may be within the sphere of his authority he shall urge the alcaldes and ayunciamento until they cause children to attend the school and watch over the fulfillment of the teacher's orders.

An official letter from the political chief was taken under consideration, in which he encloses copies of the decrees which he has received during the time that its excellency has been in recess. They were ordered to be placed in the archives.

There was taken under consideration a report from the ayuntamiento of El Bado, made in view of a petition of various individuals of that jurisdiction, asking that there be donated to them the

tract of land known as El Macho, in which report it is shown that there is no objection to the donation asked for. It was ordered to be granted.

59 There was also taken under consideration an official communication from the ayuntamiento of La Canada, in which that body asks that it be furnished with fifty dollars for supplies for the school. It was ordered that the request be refused.

The session was adjourned.

JOSE ANTONIO CHAVES. [SCROLL.]
SANTIAGO ABREII. [SCROLL.]
TEODOSIO QUINTANA. [SCROLL.]
JUAN RAFAEL ORTIZ. [SCROLL.]
ANTONIO JOSE MARTINEZ. [SCROLL.]
RAMON ABREII, *Sec'y.* [SCROLL.]

60 *Territorial Deputation.*

Secion del dia 12 de Nov^re^ de 1831.

Leyda y aprobada la acta antecedente. Se dió cuenta con una instancia del C. Nerio Antonio Montoya, vesino de Valencia en que solicita se done para labor un citio yermo que hay en el Manzano, dentro de los limites del Ojo de en Medio hasta la Rancheria; y visto el informe del R. Ayuntamiento de Tomé donde se manifiesta no haver obstaculo para la consecion del dho. terreno. Se mandó donar.

Se dió cuenta con una solicitud del C. Juan Cristoval Muñiz vecino de Jemez en que solicita para labor un Terreno ariaso que se haya dentro de los limites del Vallecito, y las tierras de dho. Pueblo. Se mandó pasar á informe al Ayuntamiento de dho. Jemes.

Se dio cuenta con un informe que dá el Ayuntamiento de Cochiti sobre la solicitud que hace el C. Agustin Duran en union de otros individuos de esta ciudad, solicitando se les done para labor un citio valdio que se haya entre las tierras de Santo Domingo y San Felipe.

Se mandó pasar á informe al Ayuntamiento de Sandia, á cuya
61 jurisdiccion pertenese al espresado Pueblo de San Felipe.

Se dió cuenta con un Presupuesto de gastos de utencilios hechos para la escuela publica de Taos, presentado por el Sor Martinez, é importante de Quarenta ps. dos rrs; y haviendose librado veinte y sinco ps. en las seciones anteriores, se le mandaron reintegrar Quince ps. dos rrs. que resultan faltando para el completo pago de la monta de dho presupuesto.

La comicion encargada de la manifestacion del Sor. Martinez presentada en la Secion antecedente dió cuenta con su dictamen, y puesto á discucion los dos articulos que comprende fueron aprovados. Se levantó la Secion.

SANTIAGO ABREU, *Presid^te^.* [SCROLL.]
AN^TO^. JOSÉ MARTINEZ. [SCROLL.]
TEODOZIO QUINTANA. [SCROLL.]
JUAN RAFAEL ORTIZ. [SCROLL.]
JOSÉ MAN^L^. SALAZAR. [SCROLL.]
RAMON ABREU, *Srio.* [SCROLL.]

62 *Territorial Deputation.*

Translation — session of the 12th day of November, 1831.

The foregoing journal was read and approved. There was taken under consideration a petition of the citizen Nerio Antonio Montoya, resident of Valencia, in which he asks that he be donated for cultivation an uncultivated tract which is at Manzano, within the limits of the Ojo de en Medio, as far as the rancheria; and the report of the ayuntamiento of Tome having been examined, in which it is shown that there is no objection to the granting of the said land, it was ordered to be donated.

There was taken under consideration a petition of the citizen Juan Cristoval Muniz, resident of Jemez, in which he asks for cultivation a tract of unbroken land which is within the limits of the vallecito and the lands of said pueblo. It was ordered to be referred for report to the ayuntamiento of Jemez.

There was taken under consideration a report made by the ayuntamiento of Cochiti upon the petition made by citizen Agustin Duran, in union with other individuals of this city, requesting that there be donated to them for cultivation a vacant tract which is found between the lands of Santo Domingo and San Felipe. It was ordered to be referred for report to the ayuntamiento of Sandia, to whose jurisdiction the said pueblo of San Felipe belongs.

There was taken under consideration an estimate of the expenses for supplies for the public school at Taos, presented by Mr. Martinez, and amounting to forty dollars and two reals: and twenty-five dollars having been appropriated at previous sessions, it was ordered that it be reimbursed to the amount of fifteen fiollars and two reals, which are lacking, to complete the payment of the amount of said estimate.

The committee having in charge the memorial which Mr. Martinez presented at the preceding session reported its decision, and the two articles which it comprises were approved.

The session was adjourned.

62½ SANTIAGO ABREU, *President.* [SCROLL.]
ANTONIO JOSE MARTINEZ. [SCROLL.]
FEODORIO QUINTANA. [SCROLL.]
JUAN RAFAEL ORTIZ. [SCROLL.]
JOSE MANUEL SALAZAR. [SCROLL.]
RAMON ABREU, *Secretary.* [SCROLL.]

63 UNITED STATES OF AMERICA, *Territory of New Mexico*, } *ss:*

In the Court of Private Land Claims.

Between—

ELOISA L. BERGERE, Petitioner,
and
THE UNITED STATES *et al.*, Respondents. } Final Decree.

This cause having heretofore been heard upon the pleadings and exhibits filed and upon proofs taken—full legal proof having been taken—and counsel having been heard for the said parties, and the petition in this cause having been sustained by satisfactory proofs, after due deliberation, the court being now sufficiently advised in the premises, makes the following finding of facts:

First. That on February 4, 1819, Bartolome Baca presented a petition to the then governor of the province of New Mexico, Facundo Melgares, setting forth that he had registered a piece of vacant *piece of* land, which was called the Torreon; that the said governor made the said grant as petitioned for on July 2, 1819, and directed Jose Garcia de la Mora to give the possession, designating the limits and officiating duly; that afterwards, to wit, on September 12, 1819, the said official gave to the said Bartolome Baca the actual possession of the said tract of land, called the Torreon, petitioned for.

Second. That the said tract of land called the Torreon had been in the actual possession of Bartolome Baca for more than four years from the date of the grant on said September 12, 1819.

Third. That the said petitioner *who* filed her petition for herself and other heirs of Manuel Antonio Otero and Miguel Antonio Otero and the legal successors in interest to the rights of the said heirs of the said Bartolome Baca.

The court finds as a matter of law that the grant to said Bartolome Baca was imperfect at the time of the cession of the department of New Mexico to the United States by the treaty of Guadalupe Hidalgo, and that the petitioner, for herself and the other heirs
64 of Manuel Antonio Otero and Miguel Antonio Otero, as the legal representatives of the said Bartolome Baca, is entitled to confirmation for eleven square leagues of land within the outboundaries of the tract of land called the Torreon, granted to said Baca and of which he was put in actual possession.

It is therefore ordered, adjudged, and decreed by this court that the claim of the petitioner for the land hereinbefore described and set out be, and the same is hereby, confirmed to the extent of eleven square leagues to the heirs and legal representatives of Bartolome Baca, provided that this confirmation shall not confer any right or title to any gold, silver, or quicksilver mines or minerals of the same.

THOMAS C. FULLER,
Associate Justice.

65 And afterwards, to wit, on the twenty-first day of said term, the same being the twenty-fifth day of March, 1896, the following, among other, proceedings were had, to wit:

66 In the Court of Private Land Claims, Santa Fé District, March Term, 1896.

J. FRANCISCO CHAVEZ *vs.* UNITED STATES. } No. 20. "Nerio Antonio Montoya Grant."

This cause having been heretofore tried and submitted to the court at a former day of the present term upon the pleadings and exhibits on file and upon the proofs, both oral and documentary, taken in open court, the court, being now sufficiently advised in the premises, finds that the claim of petitioner is not entitled to confirmation, and that the title by him asserted and claimed to the tract of land known as the "Nerio Antonio Montoya," situated in the county of Valencia and Territory of New Mexico, under a grant alleged to have been made by the territorial deputation of New Mexico to Nerio Antonio Montoya in the year 1831, is of no validity, and that the said grant so alleged is not such a one as the United States are bound to recognize and confirm under the treaties of cession by Mexico to the United States.

It is therefore ordered, adjudged, and decreed that the said claim to the tract of land known as the "Nerio Antonio Montoya" under the said alleged grant is rejected and the said petition dismissed.

JOSEPH R. REED,
Chief Justice.

67 And afterwards, to wit, on the day and year last aforesaid, there was filed in the office of said clerk an opinion of said court; which opinion was and is in the words and figures following, to wit:

68 In the Court of Private Land Claims, Santa Fé District, March Term, 1896.

J. FRANCISCO CHAVES *versus* UNITED STATES. } No. 20. "Nerio Antonio Montoya Grant."

Opinion of the Court, Rendered by Joseph R. Reed, Chief Justice, in Open Court, on March 25th, 1896, at Ten o'clock A. M.

In this case we hold that the departmental assembly or territorial deputation had no power or authority to make a grant of lands at the time this grant was attempted to be made, and the fact that the governor may have presided at the meeting at the time the action was taken makes no difference, as the power to make the grant was exclusively in the governor, and the territorial deputation had no jurisdiction in the matter. The claim is rejected, and that will be the order.

JOSEPH R. REED,
Chief Justice.

Santa Fé, New Mexico, March 25th, 1896.

69 UNITED STATES OF AMERICA, } ss:
Territory of New Mexico, }

I, James H. Reeder, clerk of the court of private land claims, do hereby certify that the foregoing 68 pages contain a full, true, and perfect transcript of all the papers, pleadings, record entries of proceedings, and evidence in the cause lately pending in said court, wherein J. Francisco Chaves was petitioner and the United States was defendant.

Seal Court of Private Land Claims, Santa Fé, New Mexico.

Witness my hand and the seal of said court, at Santa Fé, New Mexico, this 14th day of November, A. D. 1896.

JAMES H. REEDER,
Clerk C. P. L. C.,
By IRENEO L. CHAVES, *Deputy.*

Endorsed on cover: Case No. 16,550. Court of private land claims. Term No., 346. J. Francisco Chavez, appellant, *vs.* The United States. Filed April 5th, 1897.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

J. FRANCISCO CHAVEZ
vs.
UNITED STATES. } No. 88.

It is hereby stipulated and agreed that the additional transcript showing the application for and allowance of an appeal from the decree of the court of private land claims in the above-entitled cause, which additional transcript was made and certified by the clerk of the court of private land claims on the fourth day of October, 1898, and has been by him sent to the clerk of this court, may be filed by the clerk in this case, and shall be taken and considered as a part of the record herein the same as though it had been included in the transcript originally sent up, from which it was omitted by accident or inadvertence.

F. W. CLANCY,
Solicitor for Appellant.
MATT. G. REYNOLDS,
Special Assistant to the Attorney General.

Be it remembered that heretofore, to wit, on the 22nd day of September, 1896, there was duly filed in my office as clerk of the court of private land claims a petition for an appeal to the Supreme Court in the words and figures as follows, to wit:

In the Court of Private Land Claims, Sitting in the Territory of New Mexico.

J. FRANCISCO CHAVEZ
vs.
UNITED STATES. }

Now comes the said petitioner, by his solicitor, Frank W. Clancy, Esq., and prays that an appeal be granted him from the decree of this court to the Supreme Court of the United States.

FRANK W. CLANCY,
Solicitor for Petitioner.

(Endorsed:) C. N-. 20. F. No. 18. J. Francisco Chavez *vs.* United States. Application for an appeal. Filed Sep. 22, 1896. James H. Reeder, clerk, by Ireneo L. Chaves, deputy.

And be it further remembered that, to wit, on said 22nd day of September, 1896, there was duly filed an order granting an appeal to the Supreme Court of the United States from the decree of said court of private land claims, in a certain cause lately pending therein,

wherein J. Francisco Chavez was plaintiff and The United States of America was defendant; which said order was and is in the words and figures following, to wit:

In the Court of Private Land Claims, Sitting in the Territory of New Mexico.

J. FRANCISCO CHAVEZ
vs.
UNITED STATES.

Upon *and* reading and filing the application of said petitioner for an appeal from the decree of this court to the Supreme Court of the United States, and it appearing that said petitioner is entitled as of right to take such appeal under the act of Congress creating this court, it is ordered that the said petitioner, J. Francisco Chavez, be, and he hereby is, granted an appeal from the said decree of this court in this cause to the Supreme Court of the United States.

WILBUR F. STONE,
Associate Justice.

September 21st, 1896.

(Endorsed:) C. No. 20. J. Francisco Chavez *vs.* United States. Allowance of appeal. Filed September 22nd, 1896. James H. Reeder, clerk, by Ireneo L. Chaves, deputy.

I, James H. Reeder, clerk of the court of private land claims, do hereby certify that the foregoing pages contain a full, true, and perfect copy of the application and allowance of appeal in the above-entitled cause as the same appear of record and on file in my office.

Witness my hand and the seal of said court, at my office, in Santa Fé, New Mexico, this fourth day of October, A. D. 1898.

[Seal Court of Private Land Claims, Santa Fé, New Mexico.]

JAMES H. REEDER, *Clerk,*
By IRENEO L. CHAVES, *Deputy.*

[Endorsed:] Case No. 16,550. Supreme Court U. S., October term, 1898. Term No., 88. J. Francisco Chavez, app't, *vs.* The United States. Stipulation and addition to record. Office Supreme Court U. S. Filed Oct. 11, 1898. James H. McKenney, clerk.